


Recap: Trade Secret

- What is protected?
 - How do you get protection?
 - What rights does it convey?
 - What infringes?
 - What defenses are available?
-
- What is the source of law?
 - What is the policy behind it?

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This telecast is copyrighted by the NFL for the private use of our audience. Any other use of this telecast or of any pictures, descriptions, or accounts of the game without the NFL's consent, is prohibited.

Let's see whether **the video**, clear fair use, gets flagged by a copyright bot.



And on to Copyright

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How many “copies” have you made today?

- Have you used the library's photocopier?
- Have you browsed a website?
- Have you forwarded an email?
- Have you played a song on an iPod or MP3 player?
- Have you taped or TIVO'd a television show?
- Have you run a program on your computer?

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Statutory Basis

- Copyright comes from statute, Title 17 U.S.C.
 - authorized in the Constitution, Art. I sec. 8 cl. 8
 - 1790, first Copyright Act
 - 1909 overhaul
 - 1976 Act, updated the framework and set the modern categories
 - More recent updates include Sonny Bono Copyright Term Extension, anticircumvention, webcasting license, explicit inclusion of (and exceptions for) computer software

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Litigating Infringement

- Prove:
 - **Ownership of a valid copyright**
 - **Infringement**

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§ 102. Subject matter of copyright

- (a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:
 - (1) literary works;
 - (2) musical works, including any accompanying words;
 - (3) dramatic works, including any accompanying music;
 - (4) pantomimes and choreographic works;
 - (5) pictorial, graphic, and sculptural works;
 - (6) motion pictures and other audiovisual works;
 - (7) sound recordings; and
 - (8) architectural works.
- (b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

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Copyright

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Fixation

- § 102 (a) Copyright protection subsists, in accordance with this title, in original works of authorship **fixed in any tangible medium of expression**, now known or later developed ...

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Wrigley Field Rooftops



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Formalities

- Registration
 - Notice
 - Deposit
 - Publication
- Are formalities a useful limitation on copyright or a trap for the unwary?

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Registration

- No longer required to *obtain* copyright protection
- Prerequisite to statutory damages and attorneys' fees for infringement
- See Form TX, <<http://www.copyright.gov/forms/formtx.pdf>>

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Notice

- e.g. "Copyright 2006 Wendy Seltzer" or "© 2006 John Doe"
- No longer a prerequisite for protection
- Precludes "innocent infringer" defense

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Originality

- **Article I, Section 8, Clause 8**
- [Congress shall have the power...]
To promote the Progress of Science and useful Arts, by securing for limited Times to **Authors** and Inventors the exclusive Right to their respective **Writings** and Discoveries;

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"The Celebrated Stirk Family" (Bleistein v. Donaldson Lithographing)



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“Oscar Wilde No. 18,” Napoleon Sarony
(Burrow-Giles v. Sarony)



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Feist Publications v. Rural



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What about the Yellow Pages?

- CREATIVE Selection and arrangement is protectible by copyright

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What does originality mean?

- Independent creation – not discovered fact, not copied from someone else
- Novelty? no
- Aesthetic merit? no
- Intent to be original? no
- Fictionalization? no

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Expression

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Baker v. Selden

- Idea/expression dichotomy

